



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

APR 3 2008

Kim Harrison, Registered Agent  
Lincoln Road RV Park, Inc.  
850 West Lincoln Road  
P.O. Box 9708  
Helena, MT 59604

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2008-0038**

Dear Ms. Harrison:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against Lincoln Road RV Park, Inc. (Lincoln Road) under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C §300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that Lincoln Road failed to comply with an Administrative Order, Docket No. SDWA-08-2006-0050, issued on September 20, 2006, under section 1414(g) of the SDWA, 42 U.S.C. §300g-3(g). The violations are specifically set out in the complaint.

By law, Lincoln Road has the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If Lincoln Road does not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In Lincoln Road's answer it may request a hearing. Lincoln Road has the right to be represented by an attorney at any stage of these proceedings.

Whether or not Lincoln Road requests a hearing, its representatives may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of Lincoln Road's right to request a hearing on any matter to which it has stipulated in that agreement.



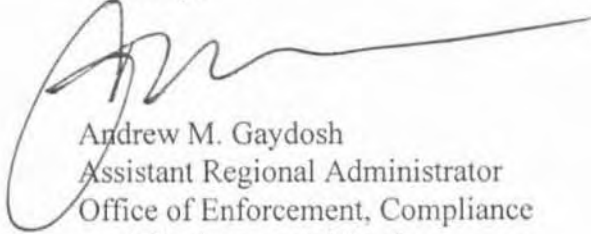
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A request for an informal conference does not extend the 30-day period during which Lincoln Road must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kimberly Pardue Welch, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6983, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: John Arrigo, MT DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF )  
)  
Lincoln Road RV Park, Inc. )  
Helena, Montana )  
) Docket No. **SDWA-08-2008-0038**  
)  
Respondent ) **COMPLAINT AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
)  
Proceedings under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. §300g-3(g) )  
)

**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended (the "SDWA"), 42 U.S.C. §300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22 ("Consolidated Rules of Practice")(Complainant's Exhibit 1).

### GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

1. Lincoln Road RV Park, Inc. (“Respondent”) is a Montana corporation and therefore a “person” as that term is defined in section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2.
2. Respondent owns and/or operates a system, the Lincoln Road RV Park Water System (the “System”), located in Lewis and Clark County, Montana, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a “public water system” as that term is defined in section 1401(4) of the SDWA, 42 U.S.C. §300f(4), and a “community water system” as that term is defined in section 1401(16) of the SDWA, 42 U.S.C. §300f(16), and 40 C.F.R. §141.2.
4. As an owner and/or operator of a public water system, Respondent is a “supplier of water” as that term is defined in section 1401(5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. §300g et seq., and its implementing regulations, 40 C.F.R. part 141 (also known as the “National Primary Drinking Water Regulations” or “NPDWRs”).

5. The source of the System's water is ground water from two wells. The System serves an average of approximately 134 persons daily through 66 service connections and is operational year-round.
6. On September 20, 2006, in accordance with section 1414(g) of the SDWA, 42 U.S.C. §§300g-3(g), the EPA issued an Administrative Order, Docket No. SDWA-08-2006-0050 (the "Order") to Respondent, citing violations of the NPDWRs.
7. A copy of the Order is attached to this complaint (Complainant's Exhibit 2).
8. By letter dated April 6, 2007, EPA notified the Respondent that the Respondent was in violation of the Order and corrected a typographical error in the Order.
9. A copy of the April 6, 2007 letter is attached to this complaint (Complainant's Exhibit 3).

### **COUNTS OF VIOLATION**

#### **Count I**

#### **Failure to Monitor for Total Coliform**

1. The Order (on page 5 and 6, in paragraph 1 of the "Order" section), as corrected by the April 6, 2007 letter, required Respondent to perform monthly bacteriological monitoring, as required by 40 C.F.R. §141.21(a) and section 17.38.215(a) of the Administrative Rules of Montana (ARM).

2. Respondent violated the Order by failing to monitor for total coliform bacteria during December 2006, July 2007, August 2007, September 2007, and November 2007.

**Count II**  
**Failure to Provide Public Notice of Violations**

1. The Order (on page 7, in paragraph 4 of the "Order" section) required Respondent to provide public notice of the failures to monitor for total coliform cited in the Order and of any post-Order failures to comply with NPDWRs.
2. The Respondent violated the Order by failing to provide public notice of its failures to monitor for total coliform cited in the Order or of the December 2006 failure to monitor cited above.

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

This complaint proposes that EPA assess an administrative penalty from Respondent. EPA is authorized to assess an administrative penalty according to section 1414(g)(3) of the SDWA, 42 U.S.C. §300g-3(g)(3) for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The amount may be up to \$27,500.<sup>1</sup>

EPA has determined the proposed penalty amount in accordance with section 1414 of the SDWA, 42 U.S.C. §300g-3. Taking into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or

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<sup>1</sup>The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

negligence, history of noncompliance, if any, and ability to pay, as known to EPA at this time, EPA proposes to assess an administrative civil penalty of \$3,000.00 against Respondent for its violations of the Order.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), Respondent has the right to request a public hearing to contest any material fact alleged in this complaint, to contest the appropriateness of the proposed penalty and/or to assert that it is entitled to judgment as a matter of law.

If Respondent wishes to request a hearing, Respondent must file a written answer in accordance with 40 C.F.R. §§22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. §22.7(c), in which to file its answer.

If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§551 et seq. ("APA"). To exercise this right, the answer must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. §22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

The answer must be in writing. An original and one copy of the answer must be sent to the EPA Regional Hearing Clerk, whose name and address are listed below, and one copy must be sent to the attorney whose name and address are provided in the signature block at the end of this complaint:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, Colorado 80202

**FAILURE TO FILE AN ANSWER**

**If Respondent does not file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint, Respondent may be subject to a default order requiring payment of the full penalty proposed in this complaint.**

EPA may obtain a default order according to 40 C.F.R. §22.17.

**REQUIREMENTS FOR ANSWER**

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which Respondent has any knowledge. The answer must state (1) any circumstances or arguments which the Respondent alleges to constitute grounds of defense, (2) any facts the Respondent disputes, (3) whether and on what basis the Respondent opposes the proposed penalty, and (4) whether the Respondent requests a hearing. **Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of that allegation.**



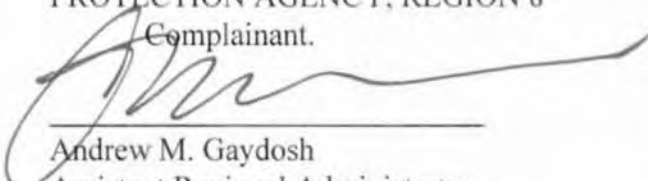
**SETTLEMENT CONFERENCE**

EPA encourages exploring settlement possibilities through an informal settlement conference. Filing an answer does not preclude settlement negotiations. **However, failing to file a timely answer may lead to a default order, even if Respondent requests, schedules, or participates in a settlement conference.**

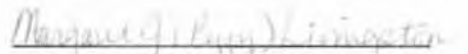
If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that Respondent may have regarding this complaint, should be directed to the attorney named below.

Dated this 2nd day of April, 2008.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

  
Margaret J. ("Peggy") Livingston  
Enforcement Attorney  
Office of Enforcement, Compliance  
and Environmental Justice

U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-7202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent to the following by CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Kim Harrison  
Registered Agent  
Lincoln Road RV Park, Inc.  
850 West Lincoln Road  
P.O. Box 9708  
Helena, MT 59604

Date: 4/3/08

By: Judith McTernan  
Judith McTernan